IN THE HIGH COURT OF JUDICATURE FOR RAJASHAN
AT JODHPUR

:: **O R D E R** ::

S.B.CRIMINAL MISC. PETITION NO.391/2007

Smt.Tipu Devi & Anr.
Vs.
State of Raj. & Anr.

Date of Order :: 28.05.2007

PRESENT

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.I.R.Choudhary, for the petitioners.
Mr.Ashok Upadhyay, PP for the State.
Mr.J.R.Beniwal, for the respondent No.2

BY THE COURT:

Reportable

This misc. petition under Section 482 Cr.P.C. has been filed by Smt. Tipu Devi and Kesara Ram for quashing of the FIR No.10/2007 registered at Police Station Sindhari, District Barmer for offence under Section 447 and 427 IPC.

According to the facts inter alia narrated in the misc. petition, the land bearing Khasra No.57/1 is "Gairmumkin Abadi" Land and vests in the Gram Panchayat Kamthai. The petitioner No. 1 is presently Sarpanch of Gram Panchayat Kamthai. A copy of Jamabandi for Samwat 2059 to 2062 in respect of the said land has been placed on record. It is also submitted that District Education Officer-cum- Ex officio Project Coordinator, Serva Shiksha Abhiyan, Barmer vide notification dated 6.7.2006 issued an administrative and financial sanction for construction of additional class room for various schools including the Government Primary School, Raneri. In the order dated 6.7.2006, the Government Primary School Raneri appears at serial No.91. In the said notification, it has specifically been mentioned that the construction shall be done only on the land which is in the name of school.

It is further submitted that before raising construction, 'no objection' was not obtained from Gram Panchayat and construction was got started at the instance of respondent No.2.

On 2.2.2007, the petitioner No.1 issued a notice to the respondent No.2 - Head Master, Government Primary School, Raneri asking him to stop the construction work but when the construction work was not stopped then on 20.2.2007, a resolution was taken by the Panchayat to stop the construction and to take building material in its possession. A copy of letter dated 20.2.2007 was also sent to SHO, Police Station Sindhari. It is further submitted that since unauthorized construction was not stopped, the petitioner No. 1 while discharging her official duties as Sarpach with the aid of police demolished the unauthorized and illegal construction of the school room and the building material was taken into possession by the Gram Panchayat. A notice was also given to the respondent No.2 for depositing the expenses of demolition of the unauthorized construction which was removed to keep the Panchayat land free from any encroachment and trespass.

Learned counsel for the petitioners stated that this false FIR has been lodged against the petitioners due to political rivalry. The petitioner No.1 has done the said act while discharging her official duties. He has cited before me the

judgments of Hon'ble Supreme Court (i) 1992 Cri.L.J.527; State of Haryana Vs. Bhajan Lal, (ii) 2006 (6) SCC 736; Indian Oil Corporation Vs. NEPC Indian Ltd. & Ors and (iii) 2003 AIR Supreme Court 1069; Ajay Mitra Vs. State of Madhya Pradesh & Ors. and stated that since the present FIR has been lodged malafidely and with ulterior motive, therefore, it may be quashed.

In reply, learned counsel for the respondent as well as learned Public Prosecutor have stated that budget was sanctioned for construction of the school building and the construction was also done in the boundary wall of the school itself. It is further stated that Gram Panchayat had no authority to remove the construction raised in the school premises. The petitioners have taken the law in their hands and caused damage to the public property. Learned counsel for the respondent further stated that from the perusal of the FIR, it appears that cognizable offence has been committed. The allegations made in the complaint prima facie satisfy the essential ingredients of the alleged offence. He further stated that FIR has not been lodged with malafides for wreaking vengeance or to cause harm to the petitioners. Therefore, he prayed that at this stage, this Court

should not interfere with the investigation. In support of his arguments, learned counsel for the respondent has cited before me the judgments of Hon'ble Supreme Court (i) 2004 (13) SCC 437 ; State of Punjab through Secretary, Home Vs. Subhash Kumar & Ors. and (ii) 2007 Cri.L.J. 170 ; Ajeet Singh Vs. State of Uttar Pradesh & Ors.

I have considered the rival submissions advanced by learned counsel for the parties and gone through the FIR impugned. I have also gone through the judgments cited by learned counsel for both the parties.

The instant FIR has been lodged by respondent No. 2- Head Master, Government Primary School, Raneri, District Barmer in which he has alleged that Smt.Tipu Devi, the present Sarpach and her husband Kesa Ram had come with JCB and Tractor-jeep and demolished the construction raised in the school premises. The police after investigation also found that prima facie, case for the alleged offence is made out against the petitioners. The petitioners have demolished the newly constructed school building and caused loss of Rs. 80,000/- to the

Government. The Investigating Agency has also found that the land bearing Khasra No.57/1 belongs to Education Department and complete land is in the possession of School and Government Department. There are four walls on the said land and new construction was also made in the boundary wall of the school premises. From the perusal of the FIR, it cannot be said that no cognizable offence has been committed. The allegations made in the complaint prima facie satisfy the essential ingredients of the alleged offences.

In the case of State of Harayana vs. Bhajan Lal (Supra) cited by learned counsel for the petitioners, the Hon'ble Supreme Court has held in para no. 108 as under:-

> "In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an

exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. Do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. Do not constitute a cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where

there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

As far as this case is concerned, it is clear from the case-diary that the ingredients of cognizable offence is prima facie made out against the petitioners. At this stage, this Court cannot reach to the conclusion whether FIR is mala fide one or it has been instituted maliciously as in the present case public property has been damaged and FIR has been lodged by the public servant. Thus, it cannot be said that this is mala fide institution of the FIR or it has been lodged for wreaking vengeance. The school building was constructed by public money and it was demolished by the official of the Panchayat Institution, therefore, this judgment does not help the learned counsel for the petitioner. This case does not fall in any of the above 7 categories.

As far as Ajay Mitra Vs. State of Madhya Pradesh's

case (supra) is concerned, the Hon'ble Supreme Court has held that when allegation made in complaint do not prima face disclose commission of offence, it can be quashed but in the present case, the ingredients of offence under Section 447 and 427 is clearly made out from the FIR itself. The public property was also damaged. Therefore, this judgment also would not help to the petitioners. As far other judgments cited by learned counsel for the petitioners is concerned, they are also not applicable to the present case as in the present case, still investigation is going on and it is not the proper stage to see whether school was made in the Nadi area or whether sanction was required to be taken or not. It is clear that the school building was already existing and new construction of additional class-room was being raised in the school building.

In the case of State of Punjab Vs. Subhash Kumar (supra) cited by learned counsel for the respondent, the Hon'ble Supreme Court has held that when FIR is under investigation, Court cannot enter into factual arena.

I would also like to mention here that in the case of

Central Bureau of Investigation Vs. Ravi Shanker Srivastva, IAS & Anr. reported in 2006 Cri.L.J. 4050, the Hon'ble Supreme Court has considered all the submissions advanced in the present case by counsel for the petitioners.

In the case of State of Karnataka and Anr Vs. Pastor P.Raju reported in 2006 Cri.L.J. 4045, the Hon'ble Supreme Court has held as under:-

> "The petition under Section 482 Cr.P.C. was filed within 12 days on 27.1.2005 when the investigation had just commenced. The petition was allowed by the High Court on 23.2.2005 when the investigation was still under progress. No report as contemplated by Section 173 Cr.P.C. had been submitted by the incharge of the police station concerned to the Magistrate empowered to take cognizance of the offence. Section 482 Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any Court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence."

In the case of Central Bureau of Investigation Vs. Ravi Shanker Srivastava, IAS & Anr. (supra), the Hon'ble

Supreme Court while relying on the judgments of Bhajan Lal's as well as other cases cited by learned counsel for the petitioners, has held as under:-

> "One of the many categories of cases where inherent power can and should be exercised to quash the proceedings is where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. While dealing with the such case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clear inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge"

The Hon'ble Supreme Court has further held in para 9 of the aforesaid judgment as under:-

> "When an information is lodged at the police station and an offence is registered, then the mala fides of the information would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The

> allegations of mala fides against the informant are of no consequences and cannot by themselves be the basis for quashing the proceedings."

In the case of M/s Medical Chemicals & Pharma Pvt. vs. M/s Biological E. Ltd reported in 2000 Cr.L.J. 1487, the Hoh'ble Supreme Court has held as under:-

> "In the matter of exercise of High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of Court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial and in the event, the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and as noticed above, very great care and caution to quash the complaint in exercise of its inherent jurisdiction."

Keeping in view the above decisions of the Hon'ble Apex Court, since the matter is under investigation, this Court cannot enter into the factual scenario of the case nor pre-judge the matter. In this case, from a bare perusal of the case-diary, it is clear that the official of the Panchayat institution have demolished the newly constructed school building and caused damage to the public property. Therefore, without commenting on the merits of this case, at this stage, looking to all the facts

and circumstances of the case, since the allegations made in the complaint prima facie satisfy the essential ingredients of the alleged offences, I find no ground to quash the impugned FIR.

Accordingly, this misc. petition is hereby dismissed.

(KRISHAN KUMAR ACHARYA), J.

NK